

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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DUSTIN BARRAL,

Case No. 3:23-cv-00386-MMD-CLB

Petitioner,

ORDER

v.

STATE OF NEVADA,

Respondent.

I. SUMMARY

Petitioner Dustin Barral, a *pro se* Nevada prisoner, commenced this action by filing a Motion to Vacate Judgment and/or Correct Illegal Sentence (ECF No. 1-1) as well as an Application for Leave to Proceed *In Forma Pauperis* (ECF No. 3 (“IFP application”)).

II. IFP APPLICATION

A \$5.00 filing fee is required to initiate a habeas action in a federal district court. 28 U.S.C. § 1914(a); Judicial Conference Schedule of Fees. The Court may authorize a person to begin an action without prepaying fees and costs if the person demonstrates indigency. 28 U.S.C. § 1915; LSR 1-1, 1-2. The IFP application must be submitted on the form provided by the Court and include specific financial information and a declaration confirming under the penalty of perjury that the financial information is true. *Id.*

Although Petitioner submitted the required form, the supporting documents show he is able to pay the \$5 filing fee. Thus, he does not qualify for a fee waiver. The Court therefore denies the IFP application and gives Petitioner until 45 days from the date of entry of this order to pay the \$5 filing fee.

III. DISCUSSION

Petitioner challenges a conviction and sentence imposed by the Eighth Judicial District Court for Clark County arguing that the state court lacked subject matter

1 jurisdiction. Because Petitioner is challenging his state court conviction and sentence, he
2 may file his motion to vacate judgment and/or correct illegal sentence in state court. If
3 Petitioner intends to pursue a federal habeas case under 28 U.S.C. § 2254 in this action,
4 he must file a petition for writ of habeas corpus on the Court's required § 2254 petition
5 form. Accordingly, if Petitioner intends to file a federal habeas case, Petitioner must file a
6 petition on the Court's form within 45 days of the date of this order.

7 **IV. CONCLUSION**

8 It is therefore ordered that Petitioner's Application for Leave to Proceed *In Forma*
9 *Pauperis* (ECF No. 3) is denied.

10 It is further ordered that Petitioner must pay the \$5.00 filing fee within 45 days of
11 the date of this order.

12 The Clerk of Court is directed to send Petitioner a blank form petition for writ of
13 habeas corpus under 28 U.S.C. § 2254 with instructions.

14 It is further ordered that if Petitioner intends to file a federal habeas case, he must
15 file a petition on the Court's form within 45 days of the date of this order.

16 It is further ordered that if Petitioner fails to timely and fully comply with this order,
17 the Court will dismiss this action without prejudice and without further advance notice.

18 DATED THIS 28th Day of August 2023.

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21 MIRANDA M. DU
22 CHIEF UNITED STATES DISTRICT JUDGE
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